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THE LAWYER AS AN OFFICER OF THE COURT
—HIS DUTY TO THE COURT IN THE
ADMINISTRATION OF JUSTICE*

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My first duty this evening is personal. I hasten to perform that duty by saying frankly that I deeply appreciate the consideration involved in your invitation to address you. I consider the opportunity a distinct honor, and I find it difficult to convey the full measure of my value of your confidence and esteem.

When I began to reflect upon the subject you assigned me: "The Lawyer as an Officer of the Court—His Duty to the Court in the Administration of Justice," involuntarily my memory ran quickly through more than twenty centuries of the past and flashed before me the stirring command written in the fifty-first chapter and twenty-seventh verse of Jeremiah. As I thought on the command of the Prophet, I visualized the constructive importance of my subject this evening, just as a flash of lightning in the night will reveal what years of daylight have failed to discover to the eye. I imagine the Prophet's face was rugged and stern, because for years he had been engaged in a stern business. The lines were chiseled deep about his mouth and across his forehead, for discouragement rather than age was his burden. Perhaps the command of Jeremiah was more blunt than tactful, but Jeremiah was a blunt man and did not make the mistake of taking himself too seriously. His eyes never lost their somber glaze of brooding because Israel lay upon his heart like a constant nightmare of adverse fortune and despair. The great

* An address delivered before the Wake County Bar Association at Raleigh, N. C., on June 1, 1925.

Prophet had seen the Kingdom drift into the gulf of spiritual delinquency deeper than the sea which surges east of Formosa. It may be, at the very moment of the Prophet's seeming defeat, the white light of the Great Future beat into his face, and, arousing himself from his gloomy introspection, like a giant from his wine, he shouted down the centuries, "Set ye up a standard in the land!" This was not a command to halt, but to march; not a command to retreat, but to charge; not a cry of defeat, but a shout of victory. From then until now, individuals and nations, together with organizations of individuals *within* nations, have, from time to time, set up their standards and borne them to the front. It is well, it is timely, that the Wake County Bar Association has set up *its* standard in North Carolina and unfurled *its* banner to the wind. I do not insinuate that the conditions manifest in the Bar of North Carolina, and of the whole country, are as deplorable and as hopeless as the Prophet imagined the conditions in Israel; but I do assert, the setting up of standards in our fraternity is as timely now, as was the cry of the old Prophet then.

THE LAWYER AS OFFICER OF THE COURT

I begin by subdividing my subject, and calling attention, first, to the Lawyer as Officer of the Court. The solemn duty of the lawyer is that he realize he is an officer of the Court, and that by virtue of the oath which he takes, should at all times perform the duties of his high office so that his brethren and the public may not come to wonder that truth is stranger than fiction. No member of the profession should lose sight of his high duty as an officer of the Court and conduct himself after the manner of the "hardest fend off" and drift into a fee-first lawyer. A fee-first lawyer is as great a menace to the constructive influence of our fraternity as was Judas in the organization of the Twelve. The fee-first philosophy is nothing more nor less than a painful betrayal of the high ideals and practical possibilities of the greatest of all the professions.

No greater service could be rendered the profession than the requirement by the law schools that all students of the law should master John Ruskin's great lecture entitled "Work." As an officer of the Court, the lawyer may find his call to duty comparable to that of the Court itself, and the possibilities of constructive influence ever broadening to purpose achievement. I know of no human institution that demands greater team work than the proper functioning of a Court, calling for a long pull, a hard pull, and a pull all together.

The individual member of the profession who never realizes, or who forgets, that he is an officer of the Court, has missed the mark of his high calling and should seek other lines of endeavor in justice to the profession which has played a part in the development and maintenance of civilization unequaled in the affairs of men.

THE LAWYER'S DUTY TO THE COURT IN THE ADMINISTRATION
OF JUSTICE

I pass now to the consideration of the Lawyers' duty to the Court in the Administration of Justice. Obviously, the administration of justice is the most difficult of all human tasks, and, therefore, demands keenness of penetration and large acquaintance with the world. Above all, the Judge should understand people, their conditions of life; their modes of thought and habits of conduct; their environment, and their proneness to selfish interpretations. With this regard the righteous Judge can call to his assistance no higher human agency than the lawyer whose ability he respects and whose conscience he knows to be void of offense.

Above every Judge the figure of Justice serenely sits holding aloft her scales, from which she blows even the dust of prejudice; and every Judge, no matter how great he may be, is bound to do justice. But, every Judge should remember that when the sword of Justice becomes a staff to support the weak, it bursts into blossom, and that the perfume of that flower is the only incense, the only offering, the only sacrifice that Mercy will accept. Mercy! 'tis a divine attribute. Mercy knows that the complex, tangled web of thought, of wish and will and want—the woven wonder of a life—has never yet been raveled back to simple threads.

Gentlemen, let us come to an understanding: Judges and lawyers, of all men, should understand the philosophy of mind, the causes of human action, and the real science of government. It is said that the three pests of a community are: A priest without charity, a doctor without knowledge, and a lawyer without a sense of justice.

We know something of the average man—of his thoughts, passions, fears, and aspirations; something of his sorrows and his joys, his weakness, his liability to fall; something of what he resists, the struggles, the victories and failures of his life. We know something of the tides and currents of the mysterious sea, something of the circuits of the wayward winds that blow with restless violence 'round about the pendant world; but we do not know where the wild storms are brewed that wreck and rend. Neither do we know in what

strange realm the mists and clouds are formed that darken all the heaven of the mind, nor from whence comes the tempest of the brain in which the will to do, sudden as the lightning's flash, seizes and holds the man until the dreadful deed is done that leaves a curse upon the soul. Our ignorance should make us hesitate; our weakness should make us merciful.

There is no reason in crushing people, therefore no excuse in oppressing them. We hate hypocrisy, but not the hypocrite; larceny, but not the thief; superstition, but not its victim. There is no elevating power in hatred. There is no reformation in cruel punishment. The soul grows greater and grander in the air of kindness, in the sunlight of intelligence. We should, therefore, do all within our power to reform, to educate, and to benefit our fellows.

And we should remember that the object of every trial is not to convict, nor is it to acquit. The object is to ascertain the truth of every inquiry, criminal or civil, by legal testimony and in accordance with law. There should be no delay except that which is caused by taking the time to find the truth. Without such delay Courts become mobs before which trials in a legal sense are impossible. It must be borne in mind that revenge is always in haste, and that justice can always afford to wait until the evidence is actually heard.

By some it is insisted that rigid, if not inexorable, punishment should be applied because the criminal is a free agent and acts accordingly; that he knows right from wrong. Precisely. But the compass does not navigate the ship; nor does it in any way determine the direction that is taken. When wind and waves are too powerful the compass is of no importance. The pilot may read it correctly, and may know the direction the ship ought to take, but the compass is not a force. So men, blown by the tempests of passion, may have an intelligent conviction that they should go another way; but, of what use, of what force, is the conviction?

Who knows to what extent reason becomes the prisoner of passion—of some strange and wild desire, the seeds of which were sown, it may be, thousands of years ago in the heart of some savage? To what extent do antecedents and surroundings affect the moral sense? Listen to Socrates: "It is strange that you should not be angry when you meet a man with an ill-conditioned body, and yet be vexed when you encounter one with an ill-conditioned mind." And listen also to that great prayer of the Buddhist: "I pray thee to have pity on the vicious: thou hast already had pity on the virtuous by making them

so." Even so, we do not think of punishing a man because he is afflicted with a disease; our desire is to find a cure. I trust my point is obvious.

SIMPLE REQUIREMENTS

In order to obtain the best possible results, the lawyer must be ever mindful of certain simple but fundamental requirements that are conducive to the highest service in solving problems which deal with the administration of human justice.

COURTESY

In the first place Courtesy is a condition precedent to real service to the Court. I do not mean by courtesy merely being polite. Courtesy is one thing and politeness is quite another. Some of the most polite men I have ever known were mere ciphers in solving human problems; unimportant factors in the great equation of life. By courtesy I mean constructive consideration which involves one of the great, if not the greatest, virtues among men—patience. The lawyer who lacks self-control should school himself against that fault. I have no reference to being brusque to the Judge. This very rarely, if ever, happens. I have reference to the spirit of general disagreeableness in the courthouse as it is reflected in the lawyer's contact with the Judge, with the litigants, with the witnesses, and above all, with his brethren the bar. Personally, nothing is more calculated to irritate a Judge than the existence of an intolerant and dominating spirit on the part of a lawyer in the conduct of a cause, whether the cause be criminal or civil. Merely being nice to the Judge involves no constructive assistance in the administration of justice. Obviously, a lawyer should refrain from any display of temper or ill feeling in the prosecution of his work in the court room. My personal view is that ill temper is one of the most besetting sins of life, and one that should be guarded against whatever the cost. Ill temper—which involves impatience—seems so prevalent in the human family that it is hardly regarded as one of the elements of bad character. I do not recall ever having heard a witness testify to the bad character of a litigant based upon the litigant's ill or uncontrollable temper. It is generally considered a petty vice, whereas for all practical purposes it is fundamentally one of the badges of bad character. Most of the ills of life can be traced directly or indirectly to impatience of character, and some of the greatest catastrophes of the world were the results of whimsical or eccentric temperament.

I know a lawyer, (and he is a great lawyer) who, when he walks into the court room, puts everything on edge. The Judge is uneasy and uncertain, the lawyers uncomfortable and upset, the witnesses in a state of rebellion or a state of panic, and when that lawyer walks out of the courthouse, everybody, including the spectators, heaves a sigh of relief.

I know of nothing that would do that particular lawyer more good than to read and assimilate Henry Drummond's wonderful prose poem, "The Greatest Thing in the World." A while ago I suggested that John Ruskin's lecture on "Work" should be incorporated in the curriculum of the law schools. I now suggest that Henry Drummond's "Greatest Thing in the World" also be incorporated in the curriculum of the law schools. Every student of the law who mastered and assimilated "The Greatest Thing in the World" would never fall within the limitations of the lawyer brought to your attention as a concrete illustration of what impatience and lack of constructive courtesy involve in the administration of justice.

BEGGING

I often wonder whether the modern law schools have not included in their curriculum a course on "How to Beg." One of the prevalent impediments to the administration of justice on the part of the bar of this day and generation is the indulgence, of a large proportion of our brethren, in pure common begging. Importunity dignifies their act. The blind alms-gatherer at the door of a European cathedral is at times not more abject or servile than many lawyers in their appeals to the Judge for mercy. A lawyer should guard with jealous care the possibility of falling into such error. Appeals for mercy which do not throw light upon the subject are not only a waste of time, but have a tendency to cause an intelligent Judge, who after all is human, to withstand the efforts and assert denial. The parading of poverty and affliction before the eyes of the Judge, the sending of wives and mothers to the Judge's chamber, the detailed recital of harrowing conditions are not, and never were intended to be, elements in the great undertaking of justice properly administered. What the Judge wants to know, and needs to know, is the true state of all the facts conducive to the perpetration of the criminal act or of the civil wrong. Judges know without lawyers telling them that men have mothers, wives, and children; that men are for the most part either destitute or limited in financial acquirements. These things are mere by-products when it comes to the intelligent administration of justice.

What the Judge should do is to reascend the stream of crimes and misfortunes to find who holds the urn from which escapes the first thread of water. The lawyer who can help the Court on such a voyage of discovery renders the highest possible service in the administration of justice; whereas the lawyer who, with maudlin sentimentality, bombards the ears of the Court and seeks to fill his overcharged heart until it wells up into his eyes, and paints a picture so distressingly pitiable that the last waking breath of the Judge is broken by a sob, impedes the intelligent progress of the Court and is a hindrance rather than a help in the administration of justice. Recently an earnest lawyer, with zeal born of enthusiasm, drew a picture for the Judge of an aged and paralytic mother, of a bent and broken father, of a wife with bleeding heart and children destitute of the necessities of life, and exclaimed to the Judge, "Can your Honor imagine a situation more dreadful?" With a sparkle of humor in his eye the Judge replied, "Yes, it might be worse—it might be true." I need a concrete illustration, and I have it. It comes out of my own experience. Recently an upstanding man with regal bearing was convicted of manufacturing a limited amount of liquor. I knew when I looked at the man that he was not a criminal, that he had gone into the enterprise through banter or through lack of consideration. His lawyer arose and for thirty minutes made an eloquent appeal for mercy which he defined to be a "suspended sentence"! In the course of the appeal the lawyer went back to William the Conqueror and pointed out how the defendant could trace his ancestry back to those days of bold deeds and daring achievements. The lawyer concluded his appeal, and my judgment was three months in jail. As the marshal took the defendant into custody, the prohibition agent who made the arrest approached the bench and said to me with quiet but certain emphasis, "Judge, when we arrested this man he fell flat upon his face in the muck and mire of the path which led to the still, and begged us to shoot him, calling out that he would rather die than face his old mother under such circumstances. Three times on his way out of the woods he threw himself flat upon the ground and implored us to shoot him, telling us he could never endure the shame his conduct would bring to his mother." I said to the officer, "Why did you not forget you caught him, and let him go?" The officer replied, "We came very near doing just that, but upon reflection we decided that if we let him go those who gave us the information that he was making liquor would conclude that he

had bought us off, and we decided we could not afford to take the chance." The officer concluded his statement by saying: "Our information was, and we found the fact to be, that this man was not making liquor for sale, but he had a little copper still which would make a very limited quantity, and he was making it for his own use." I struck out the jail sentence and substituted a fine. That officer rendered me more assistance in the sixty seconds it took him to tell me his story than all the eloquence of the learned lawyer. In the language of the street, the lawyer's appeal was pure bunk. And in the language of human experience, the statement of the officer was the light which guides.

FRANKNESS

Above all, a lawyer must always be absolutely frank with the Judge if he hopes or cares to be a constructive force in the administration of justice. A lawyer must never willfully misstate a known fact to the Judge, and I am almost persuaded to say that a lawyer should never state a legal proposition to the Court as law, without having absolute confidence in his position. The lawyer who undertakes to fool the Judge will over-reach himself in the end. It may work once, or twice, or many times, but sooner or later the Judge will discover his reprehensible methods, and the influence of that particular lawyer becomes negligible. Frankness is a great virtue and a virtue which is indispensable in administering justice. A partial truth sometimes is more mischievous than a whole lie. The administration of justice is founded upon the rock of truth, and on a false premise justice can not be predicted or maintained. To make clear what I have in mind:

In the corrupted currents of this world
Offense's gilded hand may shove by justice
And oft 'tis seen the wicked prize itself
Buys out the law: But 'tis not so above;
There is no shuffling, there the action lies
In his true nature, and we ourselves compell'd
Even to the teeth and forehead of our faults
To give in evidence.

PREPARATION

The greatest service a lawyer can render the Judge in the administration of Justice is to be at all times prepared and attentive. It is a comfort to have a lawyer appear in court who knows his case, and he will rout his adversary if his adversary is unprepared. One of the

greatest hindrances to the progress of the courts is the inattention of the lawyer to his case. It should not be necessary for the Judge to phone the lawyer to come in and try his case. The lawyer should never make convenience of the Judge, and the lawyer who loves his profession and understands its high demands will not be guilty of such delinquency.

One of the greatest ills that the Judge is heir to is to try an important case in which the lawyer is unprepared and knows nothing of what he is trying to do. Apart from the duty the lawyer owes his calling and the public, he should, out of sheer respect for the Judge, inform himself of the controlling points in his case, and failing to do this he should prefer to do nothing at all.

Mr. President and gentlemen of the Wake County Bar Association, you have doubtless observed that I have endeavored to make this paper practical rather than entertaining. If excuse is needed, it may be found in the philosophy that, the galled jade will wince.

CONCLUSION

Finally, all in all, by and large, and looking at the subject from its four corners, the most comprehensive note I can sound this evening, and more comprehensive than anything I have said, or can say, is epitomized in Article II, Section 3, of the Canons of Ethics of the Wake County Bar Association, taken from the Canons of Ethics of the American and North Carolina Bar Associations. I quote:

"Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relation of the parties, subject both the Judge and the lawyer to misconstructions of motive, and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar."